(3)

WRIT PETITION No: 5028/97

BEFORE THE HON'BLE HIGH COURT OF MADHYA PRADESH

JABALPUR

IONER : **M/s.Rajaram Maize Products,**
Surgi Road, Mohad, Tehsil & District Rajnandgaon
Through :- Prop.Suryakant Gupta

VERSUS

RESPONDENTS :
1. IndustriaL Court of
Madhya Pradesh, Jabalpur.
2. Presiding Officer, Labour Court,
Rajnandgaon.
3. Lilabai, D/o Tem Singh
4. Rajbati, D/o Dayaram
5. Jagdish S/o Jhumklal
6. Indarman S/o Phool Singh
7. Jhadu Ram S/o Harischandra
8. Kirparam S/oKhorbahara
9. Rajaram S/o Dasaru
10. Komal S/o Bisram
11. Dinanath S/o Thanu Ram
12. Dushyant S/o Jagat Ram
13. Johar S/o Umed Singh
14. Prabhu Ram S/o Chotelal
15. Hiralal S/o Pooranlal
16. Jeevanlal S/o Abhilash
17. Dinesh S/o Lalaram
18. Top Singh S/o Chituram

Respondents No. 3 to 18
C/o. Shri Prem Narayan Verma,
Motipur, RAJNANDGAON (M.P.)

OATH COMMISSIONER Smt SUMAN SONI JABALPUR

Contd...2...

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XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

W.P. No. 5028/97

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	30.1.2002 Shri K.S.Khanuja with Shri Deep Kesharwani, Advocates for the petitioner. Shri Gautam Bhaduri, Govt. Advocate for the State. Shri Rajeev Shrivastava, counsel for the respondents/employees. Arguments heard. Order dictated in open Court, passed separately. **Sd/-** **Fakhruddin** **Acting Chief Justice**	

Subba

A.F.R.

(298)

HIGH COURT OF CHHATTISGARH: BILASPUR

WRIT PETITION NO. 5026/97

Rajaram Maize Products
-v-
State Industrial Court and Ors.

WRIT PETITION No. 5027/97

Rajaram Maize Products
-v-
State Industrial Court and Ors.

WRIT PETITION No. 5028/97

Rajaram Maize Products
-v-
State Industrial Court and Ors.

Petitioner by Shri K.S. Khanuja, Advocate with Shri Deep Kesharwani, Advocate.
Respondent/State by Shri Gautam Bhaduri, Govt. Advocate.
Respondents/Employees by Shri Rajeev Shrivastava, Advocate.

O R D E R

Heard.

1. This order shall dispose of W.P.No. 5026/97, 5027/97 & 5028/97.

2. These three petitions have been filed by the petitioner / employer against the common order dated 24.11.1997 passed by the Industrial Court, arising out of the orders passed by the Labour Court, Rajnandgaon.

3. The Labour Court had dismissed all these petitions holding that they were not the employees of the petitioner and the Industrial Court while setting aside the orders passed by the Labour Court directed reinstatement of the employees without back wages.

4. Briefly stated the facts for the purpose of these petitions are that the employees filed the petitions before the Labour Court on the ground that from 12.02.1996 they had been going to the petitioner's establishment for work but they were not being allowed to work. It has further been pleaded that the petitioner / employer obtained an interim order dated 1.3.1986 prohibiting employees of the petitioner to continue the strike from 1.3.86 on wards. The employees contended that they were daily going to the establishment for work but they were not allowed to join their duties and as such they had claimed the relief from the Labour Court by filing the petitions. The petitioner / employer submitted a written statement raising various objections including preliminary objections. One of the material objections raised is regarding limitation and initiation of proceedings under section 62 of M.P.I.R. Act, 1960. The Labour Court dismissed the claim of the employees. Thereafter, the employees preferred appeals before the Industrial Court

respectively and the Industrial Court vide impugned order dt. 24.11.1997 allowed the appeals. Though the Industrial Court passed a common order, the petitioner has filed three different petitions namely W.P.No. 5026/97,5027/97 & 5028/97.

5. During the pendency of these petitions, an application under section 65 of M.P.I.R. Act was filed by the employees. On 18.2.1998 the High Court of M.P. passed an order. The relevant portion of the order is quoted below:

> " .....it is directed that petitioner shall pay the wages inclusive of maintenance allowance as admissible to the workmen under the rules....."

6. The matter thereafter came up for hearing on 14.7.1998. The employees filed an application I.A.No.2637/1998 dt. 10.08.1998. The prayer made in the application is relevant and quoted below:

> "It is therefore, humbly prayed that as the petitioner has failed to comply with Section 65 (3) of the M.P.IR. Act in accordance with 1996MPLSR 118, the

petition as filed by the petitioner may kindly be dismissed or in the alternative amount may be kindly be directed to be enhanced at least Rs. 1468/- p.m. retrospectively instead of Rs.330/- p.m. which is being paid to them at present."

7. On 09.12.1998 while admitting the petition for final hearing, the High Court of M.P. rejected the aforesaid application. The relevant portion of order dated 09.12.1998 is quoted below:

" Admit for final hearing.

I.A. No. 2637/98.

This application has been filed by the respondents No. 3 to 23 for a direction to pay to the petitioner a sum of Rs.1468/- p.m. retrospectively as wages.

It is common ground that the petitioner is complying with the provision of Section 65(3) of the M.P. Industrial Relation Act.

In the facts of the present case,

I am not inclined to accede to the prayer made in the application.

I.A. stands rejected."

8. On formation of High Court of C.G. the matter was transferred to this Court and came up for hearing on 24.07.2001. On that date counsel for the petitioner pointed out that judgment in the case of **Rajajram Maize Products Vs. Industrial Court of M.P., reported in (2001) 4 SCC 492** squarely covers the present case and counsel for the petitioner sought for an adjournment and the case was adjourned. Thereafter the matter came up for hearing on 31.07.2001. On that date it was directed that notice be issued on payment of PF within three days returnable by 14.08.2001. Thereafter, on 11.10.2001 this Court passed the following order.

"Heard Shri Singh with Shri Deep Kesharwani for the petitioner and Shri Rajeev Shrivastava, learned counsel for the respondents.

Shri Rajeev Shrivastava, learned counsel for the respondents submits that a review application has been filed before the

Supreme Court seeking review of the order passed on 21.03.2001 and according to his information received last evening , the said review application will be heard on 15.10.01 Shri Singh learned counsel for the petitioner submits that infact it is not review application as such but only an application seeking certain clarification and as such the final order passed by the Supreme Court is not sought to be reviewed.

On the other hand, Shri Rajeev Shrivastava submits that the order passed by the Supreme Court is, indeed sought to be reviewed in the said review application. It is, therefore, submitted that it will not be fair that this writ petition is heard on merit today.

List it on 18.10.2001"

9. Thereafter, the matter came up for hearing on 14.01.2002. On that date Shri Khanuja, learned counsel for the petitioner pointed out that the matter is covered by the decision of the Apex Court reported in (2001)4 SCC-492, in the case of **Rajaram Maize Products Vs.**

Industrial Court of M.P. & Others. Shri Rajeev Shrivastava, learned counsel for the respondents – employees submits that there is non-compliance of Section 65(3) of the M.P.I.R. Act. Thereafter, the case was listed on 29.01.2002 i.e. yesterday. On that date, Shri Shrivastava, counsel for the respondents / employees submitted that an affidavit has been filed. The affidavit did not disclose that the case was listed for hearing today nor any application was filed for taking the affidavit on record. The case came up for hearing at about 4.00 p.m. and it was directed to be listed for today at 10.00 a.m.

10. The matter has been listed today and in view of the situation arisen, the Court assembled at 10.00 a.m. It is noted that the documents, affidavits are filed on the date in the office when the case listed for hearing. Hundreds of cases are being listed and in fact it is very difficult for the office to place the same on record as the hearing also starts. The other side is also prejudice, as it has no knowledge of what documents are being filed and what are the contents thereof. The Cause list is generally prepared in advance, therefore when the case is placed for hearing, it should contain all the records of the case which the parties want to be considered and referred to, so that proper assistance is rendered. It is observed that this is

not being done. Accordingly, it is directed that this must be strictly followed. If for some or certain other reasons filing of the document becomes absolutely necessary, then in that case, the document should be filed while giving an extra copy to the other side and with the prior permission of the Court. Such permission be obtained in writing as far as possible. Sometimes, it is also noted that documents and affidavits are filed but there is no application for taking them on record and it is the presumption that every thing is on record. So far as rejoinder or additional return are concerned, they are filed without seeking permission to take them on record. Under these circumstances it is directed that each party must go through the rules and orders and comply the same.

11. So far as the merits of this case are concerned, learned counsel for the petitioner filed a copy of the order passed by Hon'ble Supreme Court to show that clarification applications i.e. I.A. No. 3-4 in C.A. No. 92-93/1999, I.A. Nos. 3-4 in C.A. 100-101/1999, I.A. Nos. 19-20 in C.A. No. 94-95/1999 and I.A. No. 2 in C.A. No. 91/1999 were filed and the Hon'ble Supreme Court passed the order that 'no clarification is required as sought for. The I.As. stand dismissed accordingly.

12. Counsel for the respondents/employees filed an affidavit and relevant portion thereof i.e. para 2 of the affidavit is quoted below :

> " ..... That the issue involved in the instant petition is covered by the judgment of Hon' Supreme Court rendered in Rajaram Maize Products Vs Industrial Court of M.P. & Others reported In (2001)4 SCC-492."

13. The said judgment has been read in extenso by counsel for the parties especially para 10,11 &12. Paras 10,11 &12 of the said judgment are reproduced below: -

> "..... 10. The concept of recurring cause of action arising in a matter of this nature is difficult to comprehend. In Balakrishan Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan, it was noticed that a cause of action which is complete cannot be recurring cause of action as in the present case. When the workers demanded that they should be allowed to resume work and they were not allowed to

resume work, the cause of action was complete. In such a case the workers going on demanding each day to resume work would not arise at all. The question of demanding to allow to do work even on refusal does not stand to reason.

11.In that view of the matter, we think that the High Court and the Labour Court fell into an error in analyzing and understanding the matter. In this view, we think the view taken by the Industrial Court to the extent that the cause of action had commenced at any rate on 1.3.1986 is correct. Reckoning from that date, the period of limitation of two years had been over by the time the applications were filed.

12.However, Mr. Yogeshwar Prasad sought to put forth an argument that under Section 61 of the Act the powers of the Labour Court are set out which enable the Labour Court to deal with aspects of the matter to give various reliefs to the parties and one of them is to require any employee to withdraw a strike which is held to be illegal and for that

particular relief there is no prescription of period of limitation. He submitted that infact the workers had gone on strike and they had to withdraw the same after holding it to be illegal and, therefore, they had a cause of action. We are afraid this submission is plainly misconceived. The workmen cannot seek for a relief against themselves for withdrawal of strike by asking the Labour Court to hold it to be illegal and for direction for resumption of duty. On the other hand, the case clearly put forth by the workmen in the application is that the cause of action is that the employer is not allowing the workmen to resume duty. Thus we are of the view that this contention is untenable."

14. Having considered the facts and circumstances and in view of the aforesaid judgment it is held that the petitions presented are accordingly barred by limitation.

15. Learned counsel for the respondents, however further submitted that there is non-compliance of Section 65(3) of M.P.I.R. Act and the petitions are liable to be dismissed. He placed reliance upon [1999] 9 SCC 229 in

the case of **CH.SARAIH Versus EXECUTIVE ENGINEER, PANCHAYATRAJ DEPARTMENT & ANOTHER.** The relevant paras of the judgment i.e. paras 2 & 3 are reproduced below: -

> " The Labour Court in a dispute referred to it came to the conclusion that the termination of the petitioner is illegal and accordingly directed reinstatement, but no back wages were directed to be paid. The present respondent employer challenged the said order of the Labour Court in the High Court by filing a writ petition and the learned Single Judge stayed the direction of reinstatement, but directed the employer to comply with the direction of reinstatement, but directed the employer to comply with the provisions of Section 17-B of the Industrial Disputes Act, which obliges the employer to pay the workman at the same rate which he was drawing when his services were terminated. Against this order of the learned Single Judge, the employer moved an appeal before the Division Bench and the Division

Bench by the impugned order reversed the order of the learned Single Judge on the ground that the very dispute itself was raised after inordinate delay.

15. Having examined the provisions of the Section 17-B of the industrial Disputes Act, we are of the considered view that the court has no jurisdiction to direct non-compliance with the same when the condition precedent for passing an order in terms of Section 17-B of the Act is satisfied, and this being the legislative mandate, the Division Bench of the High Court committed serious error in interfering with the direction of the learned Single Judge. We accordingly set aside the impugned order passed by the Division Bench and direct that the order of the learned Single Judge requiring compliance with Section 17-B of the Industrial Disputes Act shall be complied with by the employer. This appeal is accordingly allowed. There shall be no order as to costs."

16. So far as the present case is concerned, the order has already been passed by the Coordinate Bench and the amount is being deposited. The Court has passed an order on 18.2.1998 to the effect that 'the petitioner shall pay the wages inclusive of maintenance allowance as admissible to the workmen under the rules'. Prayer regarding enhancement of the amount has already been considered and rejected on 09.12.1998 by the co-ordinate Bench. Once the quantum of the amount was fixed and the prayer for enhancement has already been rejected, this Court having the coordinate jurisdiction cannot interfere in such matters as the prayer made virtually amounts to review of the orders passed earlier, in view of the decision of the Apex Court reported in 2001 AIR SCW 4998 in the case of Harjeet Singh @ Seeta -Vs- State of Punjab and another. In the said case the apex Court has observed as under:

> "No bench can comment on the functioning of a coordinate bench of the same court, much less sit in the judgment as an appellate Court over its decision. That which could not be done directly could also not be done indirectly. Otherwise a party aggrieved by an order passed by one Bench of the High Court would be tempted to attempt to get the matter reopened before another bench, and

there would not be any end to such attempts. Besides, it was not consistent with the judicial discipline which must be maintained by Courts both in the interest of administration of justice by assuring the binding nature of an order which becomes final, and the faith of the people in the judiciary ....."

17. Having examined the present case, it is noted that so far as the payment is concerned, an order has been passed by this Court on an application filed under Section 65 of the M.P.I.R. Act on 18-2-98 directing the petitioner to pay the wages inclusive of maintenance allowance as admissible to the workmen under the Rules. So likewise another order was passed on 14-7-98, after considering the provisions of law and the judgment of the Apex Court in the case of *Dena Bank –v- Kirti Kumar* reported in *1998 L.L.R.–1* and it was ordered that respondent-employees would be entitled to the last wages drawn which were drawn by them when they were terminated and nothing beyond that.

18. Thereafter another application i.e. I.A. No. 2637/98 was filed in which similar prayer was made and was dismissed on 9-12-98 and that order has become final. Now the respondent has filed another application on 10-10-2001 (I.A. No. 4190/2001) for dismissing the

petition for non-compliance of Section 65(3) of the M.P.I.R. Act, 1960. The same prayer has already been adjudicated and rejected by the order dated 9-12-1998. The question has already been decided and the matter having attained finality there is no use of agitating the same matter time and again as nothing survives which can be adjudicated upon by this Court on the said question. Even otherwise, this Court having co-ordinate jurisdiction cannot comment on the functioning of a co-ordinate bench or cannot sit over the orders as an appellate court and the judicial propriety and discipline must be maintained by the Courts both in the interest of administration of justice by assuring the binding nature of an order which becomes final and the faith of the people in the judiciary.

19. Counsel for the petitioner Shri Khanuja placed his reliance upon *2000-II-LLJ Page1370* in the case of ***Hindustan Zinc Ltd. ---Vs- Industrial Tribunal & Anothers.*** The relevant portion of the judgment is reproduced below: -

" Challenging the award made by the Industrial Tribunal holding that the dismissal

of the respondent – workman as illegal and directing his reinstatement with continuity of service and full back wages and all other attending benefits, a writ petition was preferred. In the writ petition, learned single Judge who disposed of the matter, noticed that the Tribunal had upheld the validity of the enquiry ending with the termination of the service of respondent No.2. However, on merits, the High Court reached the conclusion that the charges/ allegations made against the concerned workman are not proved. The High Court without examining the contentions regarding the correctness of the conclusion reached by the Tribunal; firstly, as to the scope of interference when the validity of the domestic enquiry had been upheld and secondly, on merits of the matter, decided the writ petition. The High Court noticed that the order made under Section 17-B of the Industrial Disputes Act, 1947, had not been complied with and therefore, there was no necessity to go into the merits of the case.

This conclusion is rather surprising. The High Court ought to have dealt with the merits of the case and decided the case, but went at a tangent, proceeded to dispose of the matter for non-compliance with the interim order made by the Tribunal. Under the circumstances, we set aside the order made by the High Court and remit the matter back to the High Court for fresh consideration in accordance with law. Considering the fact that the respondent No.2 workman had been terminated from service as early as the year 1980, we hope the High Court will dispose of the matter as expeditiously as possible. The appeal is accordingly allowed. There will be no order as to costs."

20. In the case of *Hindustan Zinc Ltd.* (Supra) the Apex Court held that the High Court ought to have dealt with the merits of the case instead of declining to go into merits because the employer did not comply with order made under Section 17-B of the Industrial Disputes Act. Here in the present case in view of the affidavit filed by the respondent himself to the effect that the issue involved in

the instant petition is covered by the judgment of Hon'ble Supreme Court reported in *Rajaram Maize Products* (supra), nothing remains to be decided as the question sought to be raised has already been adjudicated upon by the Hon'ble Supreme Court and application for clarification of the order has also been rejected on 8-1-2002. The orders have already been passed and as is explicitly clear that the Court has already decided the issues involved and as such they cannot be reopened.

21. Having thus considered the facts and circumstances of the case, material available on record and after hearing the learned counsel for the parties, it is held that the petitions preferred before the Labour Court were barred by limitation as has been held by the Hon'ble Supreme Court, the common order passed by the Industrial Court in the instant case on 24-11-97 cannot be sustained and is set aside.

22. The writ petitions are allowed.

23. Costs as incurred.

24. Photocopy to bar assiciation.

25. Photocopy to all concerned.

26. Photocopy to Registry for compliance.

27. Copy of this order be placed on the records of W.P. No. 5027 and W.P. No. 5028/97.

Sd/-
Fakhruddin
Acting Chief Justice

Pathak/subba